

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Cam-Thach T. Le, Tuan Tran and Hien Tran, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and John T. Driscoll, Respondents

Case Number: 01-00532

Hearing Site: Los Angeles, California

---

**REPRESENTATION OF PARTIES**

For Claimants:

Michael A. Oswald, Esq.  
Edward W. Russey, III, Esq.  
Oswald & Yap  
Irvine, California

For Respondents:

John W. Cotton, Esq.  
Cotton & Gundzik, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: January 26, 2001

First Amended Statement of Claim filed: April 26, 2001

Claimant Cam-Thach T. Le's Uniform Submission Agreement signed: undated

Claimant Tuan Tran's Uniform Submission Agreement signed: January 16, 2001

Claimant Hien Tran's Uniform Submission Agreement signed: undated

Joint Statement of Answer and Counterclaim filed by Respondents: April 3, 2001

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: April 2, 2001

Respondent John T. Driscoll's Uniform Submission Agreement signed: April 2, 2001

Claimants' Answer to Counterclaim filed: May 11, 2001

### **CASE SUMMARY**

Claimants' Statement of Claim and First Amended Statement of Claim alleged breach of fiduciary duty, breach of contract, negligent misrepresentations, unauthorized trading, negligence, and fraudulent concealment, involving unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim, and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. filed a Counterclaim alleging an unpaid debit balance.

In the Answer to the Counterclaim, Claimants denied the allegations of wrongdoing set forth in Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim.

### **RELIEF REQUESTED**

Claimants' Statement of Claim requested \$100,000.00 in compensatory damages, unspecified punitive damages, and costs including attorney's fees.

Claimants' First Amended Statement of Claim requested \$185,455.00 in compensatory damages, unspecified punitive damages, and costs including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$35,199.66 in unpaid debit balance and interest, and costs.

Claimants' Answer to the Counterclaim requested dismissal of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim and costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On April 26, 2001, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

The Panel ruled that the adjournment fee associated with the adjourned hearing dates of October 28, 29, and 30, 2002 will be assessed 50% to Claimants jointly and severally and 50% to Respondents jointly and severally.

On February 6, 2003, Claimants Cam-Thach T. Le, Tuan Tran and Hien Tran and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On February 5, 2003, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and John T. Driscoll's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Claimant Cam-Thach T. Le is liable to and shall pay Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$36,000.00 in compensatory damages.
- 3) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s request for costs is denied.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) This Award shall bear interest at the rate of 6% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 6% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim filing fee	= \$ 1,000.00

### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,100.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

October 28, 29, and 30, 2002 adjournment requested by Claimant	= \$ 1,125.00
--	---------------

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference:      October 17, 2002      1 session	
2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:      June 18, 2002      1 session	
October 28, 2002      1 session	
8 Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearings:      February 18, 2003      2 sessions	
February 19, 2003      2 sessions	
March 24, 2003      2 sessions	
March 25, 2003      2 sessions	

---

<b>Total Forum Fees</b>	<b>= \$11,700.00</b>
-------------------------	----------------------

1. The Panel assessed \$ 5,850.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 5,850.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 5,850.00
Total Fees	= \$ 6,637.50
<u>Less payments made by Cam-Thach T. Le</u>	= \$(1,350.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,287.50</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 4,100.00
Total Fees	= \$ 5,100.00
<u>Less payments</u>	= \$(5,100.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	= \$ 5,850.00
Total Fees	= \$ 6,412.50
<u>Less payments made by Merrill Lynch, Pierce, Fenner &amp; Smith, Inc.</u>	= \$( 450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,962.50</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Susan B. Gans-Smith, Esq.	-	Public Arbitrator, Presiding Chair
Vincent J. Natoli, Jr.	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

Susan B. Gans-Smith, Esq.  
Chair, Public Arbitrator

---

Signature Date

---

Vincent J. Natoli, Jr.  
Public Arbitrator

---

Signature Date

---

John H. Knight, Jr.  
Non-Public Arbitrator

---

Signature Date

---

Date of Service

**ARBITRATION PANEL**

Susan B. Gans-Smith, Esq.	-	Public Arbitrator, Presiding Chair
Vincent J. Natoli, Jr.	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Susan B. Gans-Smith, Esq.  
Chair, Public Arbitrator

3-26-03  
Signature Date

\_\_\_\_\_  
Vincent J. Natoli, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John H. Knight, Jr.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

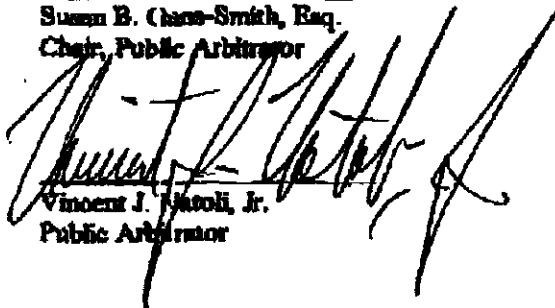
3/27/03  
Date of Service

**ARBITRATION PANEL**

Susan B. Chase-Smith, Esq.	-	Public Arbitrator, Presiding Chair
Vincent J. Natoli, Jr.	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Susan B. Chase-Smith, Esq.  
Chair, Public Arbitrator



Vincent J. Natoli, Jr.  
Public Arbitrator

Signature Date

3/27/03

Signature Date

John H. Knight, Jr.  
Non-Public Arbitrator

Signature Date

3/27/03

Date of Service



**ARBITRATION PANEL**

Susan B. Gans-Smith, Esq.	-	Public Arbitrator, Presiding Chair
Vincent J. Natoli, Jr.	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

Susan B. Gans-Smith, Esq.  
Chair, Public Arbitrator

---

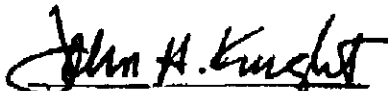
Signature Date

---

Vincent J. Natoli, Jr.  
Public Arbitrator

---

Signature Date

  
John H. Knight, Jr.  
Non-Public Arbitrator

3/26/03  
Signature Date

3/27/03  
Date of Service